

# EXHIBIT 4

**CONFIDENTIAL**

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE WESTERN DISTRICT OF TEXAS  
3                               SAN ANTONIO DIVISION

3 SECURITIES AND EXCHANGE                               ) CONFIDENTIAL  
4 COMMISSION,   )  
5                               Plaintiff,                               )  
6                               -against-                               ) Civil Action No.:  
7                               ROBERT J. MUELLER, DEEPROOT                               ) 5:21-cv-785-XR  
8 FUNDS LLC (a/k/a dprt Funds,                               )  
9 LLC), AND POLICY SERVICES INC.,                               )  
10                               Defendants,                               )  
11                               -and-                               )  
12 DEEPROOT TECH LLC, DEEPROOT                               )  
13 PINBALL LLC, DEEPROOT STUDIOS LLC,                               )  
14 DEEPROOT SPORTS & ENTERTAINMENT                               )  
15 LLC, AND DEEPROOT RE 12621                               )  
16 SILICON DR LLC, AND ROBERT J.                               )  
17 MUELLER, JEFFREY L. MUELLER, AND                               )  
18 BELINDA G. BREEN, AS CO-TRUSTEES                               )  
19 OF THE MB HALE OHANA REVOCABLE TRUST,)                               )  
20                               Relief Defendants.                               )  
21                               \_\_\_\_\_)

17 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT MUELLER, produced  
18 as a witness at the instance of the Plaintiff and duly  
19 sworn, was taken in the above styled and numbered cause on  
20 Thursday, March 9, 2023, from 9:36 a.m. to 7:35 p.m.,  
21 before Janalyn Elkins, CSR, in and for the State of Texas,  
22 reported by computerized stenotype machine, at the offices  
23 of Davis Santos, PC, 719 Flores Street, San Antonio,  
24 Texas, pursuant to the Federal Rules of Civil Procedure  
25 and any provisions stated on the record herein.

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09:38:23 1 indicating that you were the target of a criminal  
09:38:24 2 investigation; is that correct?

09:38:26 3 A. I don't remember the contents of the letter. I  
09:38:30 4 understand from counsel that a letter was received.

09:38:32 5 Q. Okay. And have you received any -- any  
09:38:34 6 indication from either counsel or from anyone else in  
09:38:38 7 the government that you were no longer the target of a  
09:38:40 8 criminal investigation?

09:38:41 9 MR. HULINGS: And I'm going to instruct the  
09:38:42 10 witness not to provide any answers that reflect  
09:38:44 11 communications from counsel on any subject, including  
09:38:48 12 the subject raised in that question.

09:38:53 13 So I'm instructing you not to answer to the  
09:38:55 14 extent the answer is based on communications with  
09:38:57 15 counsel.

09:39:00 16 Q. (BY MR. NASSE) Do you have any response? Can  
09:39:02 17 you answer that question without revealing privilege?

09:39:07 18 MR. HULINGS: If we can confer briefly on  
09:39:10 19 the privilege question.

09:39:11 20 MR. NASSE: That's fine.

09:39:12 21 MR. HULINGS: Just a moment.

09:39:15 22 (Counsel confers with witness.)

09:39:45 23 MR. HULINGS: Okay. We're going to  
09:39:46 24 instruct him not to answer that question.

09:39:47 25 Q. (BY MR. NASSE) Are you aware you are under

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09:41:26 1 but I'm particularly pointing to page 12.

09:41:29 2 A. Thank you.

09:41:34 3 MR. HULINGS: Is this marked as an exhibit?

09:41:35 4 MR. NASSE: It's a pleading. I'm not going  
09:41:37 5 to mark it as an exhibit.

09:41:38 6 MR. HULINGS: Okay.

09:41:45 7 Q. (BY MR. NASSE) Have you read page 12? Do you  
09:41:47 8 see where the paragraph -- I don't have another copy,  
09:41:50 9 but the paragraph where it says you are asserting the  
09:41:53 10 advice of counsel defense?

09:41:55 11 MR. NASSE: You can have him read the  
09:41:57 12 section if you want in the record.

09:41:58 13 THE WITNESS: Would you like me to read  
09:41:58 14 No. 2?

09:42:01 15 Q. (BY MR. NASSE) Go ahead. Yes, please.

09:42:03 16 A. (Reading:) Mr. Mueller relied on the advice of  
09:42:05 17 counsel in taking the actions that the SEC alleges are  
09:42:09 18 the basis of its claims. Reliance on the advice of  
09:42:12 19 counsel negates a willful violation of the law. See  
09:42:15 20 United States versus Ragsdale, 426 F3d 765, 788 page --  
09:42:21 21 Fifth Circuit 2005.

09:42:25 22 Q. Okay. And you're still asserting that defense?

09:42:26 23 A. Yes.

09:42:27 24 Q. And have you ever been informed by anyone other  
09:42:29 25 than counsel that you are under criminal investigation?

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09:42:32 1 MR. HULINGS: Objection; vague as to  
09:42:34 2 "criminal investigation."

09:42:37 3 Q. (BY MR. NASSE) Criminal investigation  
09:42:39 4 currently going on?

09:42:52 5 MR. HULINGS: I'm going to instruct again  
09:42:53 6 that if -- if the witness is not aware of the criminal  
09:42:56 7 investigation outside of communications with counsel, if  
09:43:02 8 there is a criminal investigation, that he not answer  
09:43:05 9 the question.

09:43:07 10 If there is a source outside of counsel,  
09:43:10 11 the witness can answer. But the witness is instructed  
09:43:13 12 not to reveal communications from counsel.

09:43:18 13 THE WITNESS: I don't recall hearing of it  
09:43:20 14 anywhere other than counsel.

09:43:22 15 MR. NASSE: And just to be clear, the  
09:43:24 16 reason, Jay, we're asking this is we want to make sure  
09:43:28 17 the record is clear that he's aware there's a criminal  
09:43:30 18 investigation and he's continuing to do this deposition.

09:43:33 19 MR. HULINGS: I think that -- I mean, I  
09:43:35 20 think that's pretty well established in the  
09:43:37 21 communications ahead of the deposition.

09:43:39 22 Q. (BY MR. NASSE) All right. And so,  
09:43:42 23 Mr. Mueller, you're asserting the advice of counsel  
09:43:45 24 defense based on the engagement of the law firm Carlile  
09:43:49 25 Patchen & Murphy; is that correct?

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09:50:41 1 Q. Okay. And is Dennis Concilla one of the  
09:50:44 2 attorneys at Carlile Patchen that you retained?

09:50:47 3 A. Yes.

09:50:47 4 Q. Okay. So does this appear to be an email  
09:50:51 5 correspondence between yourself and Mr. Concilla in  
09:50:57 6 April of 2023 -- I mean, excuse me, 2013?

09:51:02 7 A. Like I said, without reading this, I don't  
09:51:08 8 doubt that it's authentic. But without reading it, I  
09:51:12 9 don't -- I don't recollect.

09:51:13 10 Q. Okay. If you could go -- so these read from  
09:51:16 11 the back forward. So it's the second to last page  
09:51:21 12 there's an email from -- dated April 19, 2013 at  
09:51:26 13 11:21 a.m. Do you see that, subject line: "Follow-up  
09:51:30 14 Conference Call"?

09:51:31 15 A. Yes.

09:51:36 16 Q. Okay. And this is an email at the beginning  
09:51:39 17 you say, (Reading:) I wanted to get back to you  
09:51:41 18 concerning the conference call with Andrew, Russ Hagan,  
09:51:44 19 and myself last week.

09:51:45 20 Do you see that?

09:51:46 21 A. Yes.

09:51:46 22 MR. HULINGS: And I'm going to object to  
09:51:49 23 this document as being including information that is  
09:51:54 24 outside the scope of our privilege waiver, "ours"  
09:51:56 25 meaning Mr. Mueller's. We did not produce this

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09:51:59 1 document. This was produced by the trustee.

09:52:01 2 We reserve the right to demand that this  
09:52:04 3 document be struck from the record and returned by the  
09:52:09 4 SEC at the appropriate time. And object to any further  
09:52:12 5 questioning on the content of this email, which again,  
09:52:21 6 is not produced by Mr. Mueller. It includes information  
09:52:24 7 particularly on the back --

09:52:25 8 MR. NASSE: I think we're done with the  
09:52:27 9 speaking objections.

09:52:28 10 MR. HULINGS: Well, it's not an objection.  
09:52:30 11 I'm objecting to privilege.

09:52:32 12 MR. NASSE: Yeah, I understand. But I  
09:52:32 13 would say under the local rule, you have a right to  
09:52:36 14 inquire on the scope and nature of the privilege.  
09:52:38 15 You're asserting a privilege. We have a right to  
09:52:38 16 inquire on it.

09:52:38 17 We don't believe this document is  
09:52:39 18 privileged based on the fact it wasn't -- it's in the  
09:52:43 19 trustee's possession and the fact that the nature of the  
09:52:45 20 document itself, which we'll get into, explores the  
09:52:48 21 scope of the privilege.

09:52:49 22 So I intend to ask questions about it. You  
09:52:52 23 are going to instruct the witness not to answer any  
09:52:54 24 questions about this; is that correct?

09:52:56 25 MR. HULINGS: I am going to instruct the

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09:52:57 1 witness not to answer any questions about this  
09:53:00 2 particular document because it includes information that  
09:53:03 3 is outside of Mr. Mueller's -- the scope of  
09:53:07 4 Mr. Mueller's privilege waiver.

09:53:09 5                   You are entitled to ask about the nature of  
09:53:11 6 the representation. We are not objecting to the  
09:53:14 7 engagement letter. But we are objecting to this email  
09:53:17 8 which includes information that is outside of the scope  
09:53:19 9 of our waiver.

09:53:20 10                   MR. NASSE: Well, I think it goes to the  
09:53:22 11 waiver because he identifies a different entity as the  
09:53:26 12 client so...

09:53:27 13                   MR. HULINGS: You can certainly ask him  
09:53:28 14 about that. But the document itself includes  
09:53:32 15 information that is outside of our waiver. If you want  
09:53:34 16 to redact it, and we can talk about it then. But right  
09:53:38 17 now looking at this it includes information that is  
09:53:41 18 outside the scope of our waiver. It is privileged. So  
09:53:44 19 we are instructing him not to answer questions based on  
09:53:46 20 this document.

09:53:47 21           Q. (BY MR. NASSE) Mr. Mueller, did you tell  
09:53:49 22 Dennis Concilla the client for purposes of this  
09:53:52 23 engagement in 2013, was Policy Services, Inc.?

09:53:56 24           A. I don't recall that conversation.

09:53:58 25           Q. Okay. And I refer you to Exhibit 6 to refresh



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09:59:47 1                   You respond at 11:44 a.m. the same day,  
09:59:50 2   (Reading:) Hi, Dennis. Policy Services will be  
09:59:51 3 preferable until deeproot is finalized.

09:59:55 4                   MR. HULINGS: So objection to reading from  
09:59:59 5 an exhibit that is unredacted and privileged in part and  
10:00:04 6 reserve the right to move to strike.

10:00:07 7                   But you can answer the question.

10:00:09 8                   THE WITNESS: I see that. That's what I  
10:00:12 9 wrote.

10:00:12 10                  Q. (BY MR. NASSE) Okay. Do you recall any  
10:00:13 11 conversation with Mr. Concilla where you said you were  
10:00:16 12 personally a client?

10:00:17 13                  A. We had a lot of conversations where there were  
10:00:21 14 a lot of clients that were mentioned over the years.

10:00:23 15                  Q. Okay. Do you have any specific recollection of  
10:00:25 16 telling Mr. Concilla that you were engaged in a personal  
10:00:28 17 capacity?

10:00:29 18                  A. So I would have to answer that using something  
10:00:33 19 that Mr. Concilla and Andy Frederica said, which I  
10:00:37 20 understand is privileged.

10:00:39 21                  Q. I want your understanding.

10:00:40 22                  A. Yes, absolutely.

10:00:42 23                  Q. So your understanding -- do you have any  
10:00:44 24 specific recollection of telling Mr. Concilla or anyone  
10:00:48 25 else at Carlile Patchen that you were retained in a

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10:00:50 1 personal capacity?

10:00:53 2 MR. HULINGS: So objection to the extent it  
10:00:54 3 calls for information outside of our privilege waiver.  
10:00:58 4 So the privilege waiver is communications regarding --  
10:01:01 5 within a particular date range within -- regarding  
10:01:06 6 certain subjects. SEC has that waiver.

10:01:12 7 So if the answer is within the scope of  
10:01:15 8 that waiver, you can provide a response. If it is  
10:01:18 9 outside the scope of the waiver, you are instructed not  
10:01:20 10 to respond.

10:01:21 11 MR. NASSE: Yeah, I'll just say again the  
10:01:22 12 speaking objections are unneeded. And I will also say  
10:01:25 13 that you're trying to have sword and shield here.  
10:01:27 14 You're saying he received advice of counsel based on the  
10:01:30 15 fact that he has individual representation. You are not  
10:01:32 16 letting me inquire about whether he was individually  
10:01:35 17 retained. So --

10:01:36 18 MR. HULINGS: I disagree with that, that  
10:01:38 19 that's what's going on. I move to strike the  
10:01:41 20 commentary. It -- this is -- you know, there is a  
10:01:43 21 limited privilege waiver. We need to protect that --  
10:01:46 22 the limited scope of the waiver. I understand that you  
10:01:48 23 don't agree. But we need to make sure the record is  
10:01:51 24 clear that we are not waiving any -- that we are  
10:01:55 25 instructing him not to answer outside of the scope of

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10:01:57 1 the existing privilege waiver.

10:01:59 2 If it is within the scope of the existing  
10:02:01 3 privilege waiver, he is instructed he can answer.

10:02:01 4 MR. NASSE: I understand you're instructing  
10:02:09 5 him. But I believe we don't agree -- why don't you put  
10:02:09 6 for the record, we're not going to argue eating up time.  
10:02:10 7 But we'll put for the record that we do not agree and  
10:02:11 8 that you raised an advice of counsel defence, which I  
10:02:14 9 understand the law is a complete waiver once you do  
10:02:15 10 that. So your arguments about a limited waiver are just  
10:02:21 11 incorrect under the law.

10:02:22 12 So go ahead and try to answer.

10:02:24 13 MR. HULINGS: So we disagree with that  
10:02:26 14 statement of the law and move to strike it.

10:02:32 15 Q. (BY MR. NASSE) Can you answer the question?

10:02:33 16 A. I don't recall the question after that back and  
10:02:35 17 forth.

10:02:35 18 Q. Do you recall any specific conversations with  
10:02:38 19 Mr. Concilla or anyone else at Carlile Patchen telling  
10:02:43 20 them that you wish to be engaged as a client in an  
10:02:46 21 individual capacity?

10:02:46 22 MR. HULINGS: Same objection and  
10:02:48 23 instruction.

10:02:49 24 THE WITNESS: Since you're referring to  
10:02:53 25 this time period, it would seem to me through advice of

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10:02:56 1 counsel that all of those communications would be  
10:02:58 2 privileged.

10:02:59 3 Q. (BY MR. NASSE) So you're not answering on the  
10:03:01 4 basis of privilege. Am I clear?

10:03:03 5 A. I'm taking the advice of my counsel.

10:03:05 6 Q. Okay.

10:03:12 7 MR. HULINGS: Let me talk to him again.  
10:03:14 8 You're asking about this -- this is a dangerous area.  
10:03:17 9 This is -- you're going to have to be patient. We can  
10:03:18 10 go off the record to preserve your time. But we  
10:03:21 11 need to -- you know, this is -- we're asking about  
10:03:22 12 privilege issues, so it will require occasional  
10:03:25 13 communications about the scope of privilege.

10:03:28 14 MR. NASSE: He answered so I'm ready to  
10:03:31 15 move on so...

10:03:32 16 MR. HULINGS: Okay.

10:03:34 17 Q. (BY MR. NASSE) You said you testified that you  
10:03:43 18 use the email address Contact@PolicyServices.net; is  
10:03:48 19 that correct?

10:03:48 20 A. It's one of many emails that I used.

10:03:50 21 Q. Okay. And that email address is hosted -- is  
10:03:54 22 owned by Policy Services?

10:03:56 23 MR. HULINGS: Objection as to "owned."

10:03:58 24 Q. (BY MR. NASSE) It's hosted on Policy Services  
10:04:00 25 servers?

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10:05:01 1 MR. HULINGS: Same objection. Instruct the  
10:05:03 2 witness to pause to give us a chance to object unless  
10:05:06 3 it's about privilege and you're instructed you can  
10:05:09 4 answer. But we need a chance to object to maintain the  
10:05:11 5 record so that we can address evidentiary issues later  
10:05:15 6 in the case.

10:05:16 7 Q. (BY MR. NASSE) And this engagement of Carlile  
10:05:19 8 Patchen in 2013 was for Policy Services, Inc.; is that  
10:05:31 9 correct?

10:05:31 10 MR. HULINGS: Objection; vague as to form  
10:05:35 11 and asks for a legal conclusion.

10:05:37 12 THE WITNESS: I don't remember specifically  
10:05:39 13 about the engagement letter. But it was my  
10:05:46 14 understanding that there were multiple clients involved.

10:05:53 15 Q. (BY MR. NASSE) And when you met -- what is  
10:05:56 16 that understanding based on?

10:05:58 17 A. Privileged discussions that we've already been  
10:06:02 18 over.

10:06:02 19 Q. So you're not answering that question on the  
10:06:04 20 basis of privilege? That's what I'm asking.

10:06:06 21 A. That is correct.

10:06:08 22 Q. Did you have meetings with Carlile Patchen or  
10:06:10 23 telephone calls with Carlile Patchen in the presence of  
10:06:15 24 Russ Hagan?

10:06:19 25 MR. HULINGS: Again, our privilege waiver

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10:06:21 1 is -- I understand the SEC doesn't like it and I don't  
10:06:25 2 appreciate the SEC laughing, but there is a limited  
10:06:28 3 privilege waiver that is currently -- is what we have  
10:06:32 4 agreed to waive and that has dates and subject matter  
10:06:36 5 limitations. So if you want to show him the letter, we  
10:06:40 6 can do that or if you want us to pause and I can refresh  
10:06:43 7 his memory with the privilege waiver, we can do that.  
10:06:46 8 But there's a date range and there's subject matter  
10:06:48 9 limitations.

10:06:49 10 So to the extent that Mr. Hagan -- to the  
10:06:52 11 extent that that question calls for information that was  
10:06:55 12 within the waiver, he can answer. If it's outside the  
10:06:58 13 waiver, then he's instructed not to answer.

10:07:08 14 Q. (BY MR. NASSE) Can you answer the question?

10:07:09 15 A. Could you repeat it?

10:07:10 16 Q. Did you have --

10:07:11 17 A. Sir, smiling and laughing at me is  
10:07:13 18 unprofessional.

10:07:14 19 Q. I'm not smiling or laughing. I'm asking you a  
10:07:17 20 question.

10:07:17 21 A. It is.

10:07:17 22 Q. I will move to strike that because it's not  
10:07:19 23 accurate.

10:07:20 24 Did you have discussions with Dennis  
10:07:22 25 Concilla or anyone else at Carlile Patchen in the

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10:34:36 1 what did you seek Carlile Patchen's advice for?

10:34:40 2 A. There were quite a few issues. I don't recall  
10:34:43 3 all of them. And even if I did recall them, I think  
10:34:47 4 you're -- at least admitting from what I understand from  
10:34:52 5 your question that they would be privileged.

10:34:54 6 Q. I don't think your lawyer has instructed you  
10:34:58 7 not to answer.

10:34:58 8 MR. HULINGS: Well, so the question was  
10:34:59 9 without revealing the substance of any --

10:35:01 10 Q. (BY MR. NASSE) Can you do so?

10:35:02 11 A. I cannot do so, to the best of my recollection.

10:35:05 12 Q. So sitting here today, you have -- you have no  
10:35:13 13 recollection of receiving advice not related to Policy  
10:35:18 14 Services, Inc. or deeproot Funds or deeproot Capital  
10:35:22 15 Management or their affiliates or subsidiaries without  
10:35:26 16 revealing privileged information?

10:35:28 17 MR. HULINGS: So I will, again, instruct to  
10:35:31 18 not reveal the substance of any communications. You can  
10:35:34 19 reveal the general topics if you can without revealing  
10:35:37 20 the substance. And I'm also going to object on  
10:35:41 21 vagueness grounds.

10:35:43 22 THE WITNESS: Without revealing privileged  
10:35:47 23 information, no, I cannot.

10:36:13 24 MR. NASSE: So we are at 29, I think?

10:36:17 25 THE REPORTER: 28.

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12:03:29 1 Q. And again, it appears you respond, "Don't  
12:03:32 2 understand how this is a fund."

12:03:33 3 If you look at the email above on August --  
12:03:43 4 sort of goes over the bottom of the second page to the  
12:03:46 5 top of the first -- third page, August 20th, you respond  
12:03:50 6 to Ms. Carron that you had sent -- you know, (Reading:)  
12:03:55 7 Sent Mr. Concilla an email on this, but he hasn't got  
12:03:58 8 back to me.

12:03:58 9 Is that fair to say?

12:04:00 10 A. Are you talking about on --

12:04:05 11 Q. It's the bottom of -- bottom of the second  
12:04:07 12 page, top of the third page, sort of the email.

12:04:10 13 A. There's two emails there. So it looks like --

12:04:14 14 Q. She just follows up --

12:04:16 15 A. She notes, "and then I email all of them back?"

12:04:19 16 Q. Yeah. And in that email from you on the very  
12:04:22 17 top it says, (Reading:) By the way, just had a card  
12:04:24 18 from Idaho telling us our annual report of renewal for  
12:04:29 19 DWA was coming in October. It's my understanding that  
12:04:32 20 our settlement with them requires us to withdraw those  
12:04:36 21 filings months ago.

12:04:38 22 Do you see that?

12:04:39 23 A. I see that.

12:04:39 24 Q. What is -- what is -- what is -- did something  
12:04:40 25 occur in Idaho related to deeproot?



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12:04:43 1 MR. HULINGS: So I'm going to instruct him  
12:04:45 2 not to answer. And we will be snapping this back and  
12:04:45 3 redacting it as a document that should have been  
12:04:52 4 redacted because it exceeds the scope of the privilege.

12:04:56 5 MR. NASSE: So Are you instructing him not  
12:04:57 6 to answer?

12:04:58 7 MR. HULINGS: Yes, I am.

12:04:58 8 Q. (BY MR. NASSE) Okay. Were deeproot Funds or  
12:05:00 9 Policy Services or any of their affiliates the subject  
12:05:04 10 of any investigation by Idaho securities regulators?

12:05:09 11 MR. HULINGS: I'm instructing you not to  
12:05:12 12 answer question.

12:05:12 13 MR. NASSE: The fact of that investigation  
12:05:14 14 is privileged?

12:05:14 15 MR. HULINGS: All right. So without  
12:05:18 16 disclosing the content of any communication with  
12:05:21 17 counsel, you can answer the question about the existence  
12:05:24 18 of an investigation.

12:05:27 19 THE WITNESS: My understanding and  
12:05:28 20 recollection is it was not an investigation.

12:05:31 21 Q. (BY MR. NASSE) What was it?

12:05:32 22 A. They had --

12:05:34 23 Q. I'm sorry. When you say, "they," who do you  
12:05:36 24 mean?

12:05:36 25 A. Idaho.

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12:05:38 1 Q. Idaho. What agency?

12:05:40 2 A. You had -- you had someone in the Idaho -- I  
12:05:42 3 don't remember if it was Department of Securities or  
12:05:44 4 what the entity was -- and after registering our Form D  
12:05:51 5 in that state through the -- and I don't remember the  
12:05:55 6 abbreviation for the -- NASA or EFD or whatever, the  
12:05:59 7 system where you file your Form D notices in the states  
12:06:03 8 that are under that system had a problem with, I  
12:06:07 9 believe, some -- a single sentence on our website. And  
12:06:16 10 Dennis --

12:06:19 11 MR. HULINGS: Hold on. No.

12:06:19 12 THE WITNESS: Okay.

12:06:20 13 MR. HULINGS: Instruct you not to disclose  
12:06:22 14 the content of any communications with Mr. Concilla  
12:06:24 15 about anything other than drafting of PPMs.

12:06:27 16 THE WITNESS: There was a settlement as it  
12:06:29 17 says.

12:06:30 18 Q. (BY MR. NASSE) Okay. There was a settlement  
12:06:31 19 with the Idaho State Securities regulator?

12:06:35 20 A. Dennis dealt with it. That's all I know.

12:06:38 21 Q. Do you know what entity entered into the  
12:06:40 22 settlement?

12:06:41 23 A. No, I don't recall.

12:06:42 24 Q. Okay. Was it you personally entered into the  
12:06:44 25 settlement?

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12:27:40 1 Q. (BY MR. NASSE) Did you ever tell Mr. Concilla  
12:27:43 2 that you were taking loans from any of the funds?

12:27:49 3 MR. HULINGS: Objection. Okay. So the --  
12:27:56 4 is that question limited to pre-2019?

12:28:01 5 MR. NASSE: Sure. Yes.

12:28:03 6 MR. HULINGS: All right. You can answer as  
12:28:07 7 long as it's before January 1, 2019.

12:28:11 8 THE WITNESS: We had very frank and robust  
12:28:13 9 discussions about almost everything we did with Dennis  
12:28:17 10 and Andy. They had an insight into almost everything  
12:28:20 11 that we did. I don't know what you mean by loans. We  
12:28:24 12 talk about payments here. But yes, they knew that was  
12:28:27 13 happening and it just confirmed it that I refreshed his  
12:28:31 14 memory about it here.

12:28:33 15 Q. (BY MR. NASSE) That you understood that  
12:28:34 16 payments were happening indirectly?

12:28:37 17 Okay. Do you have any specific  
12:28:39 18 recollection of discussing taking out loans from any of  
12:28:42 19 the deeproot businesses?

12:28:44 20 MR. HULINGS: Objection; vague and loans --  
12:28:48 21 vague as to loans from the deeproot businesses.

12:28:52 22 MR. NASSE: Well, I'm happy to clarify.

12:28:54 23 MR. HULINGS: Yeah. Just clean the  
12:28:55 24 question up a little bit, yeah.

12:28:57 25 Q. (BY MR. NASSE) Do you have any specific

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12:28:58 1 recollection of any discussions with anyone from Carlile  
12:29:02 2 Patchen regarding you receiving or taking loans from any  
12:29:08 3 entity owned or controlled by Policy Services, Inc.?

12:29:15 4 MR. HULINGS: Provided that the answer is  
12:29:17 5 prior to 2019, you can answer.

12:29:19 6 THE WITNESS: Again, we talked about almost  
12:29:22 7 everything. I don't remember of the specific word loans  
12:29:25 8 or payments or compensation was used at the time. Here  
12:29:30 9 it says "payments." Probably used different terms in  
12:29:34 10 different conversations. But they understood that Russ  
12:29:38 11 and I received, however you want to call it, from the  
12:29:44 12 fund for our services. That's where he mentions, I  
12:29:48 13 believe, here fund management, fees for fund management  
12:29:53 14 as an executive.

12:29:54 15 Q. (BY MR. NASSE) My -- so sitting here today,  
12:29:57 16 you have no specific recollection of discussing taking  
12:30:00 17 loans from Policy Services, Inc. or any of the  
12:30:03 18 subsidiaries or affiliates?

12:30:05 19 MR. HULINGS: Objection; vague as to  
12:30:06 20 "loans."

12:30:07 21 THE WITNESS: Like I said, I'm sure we did.  
12:30:09 22 I don't recall specifically because we had very robust  
12:30:13 23 discussions verbal and written about a lot of things.  
12:30:16 24 And here we had already been with them for some time and  
12:30:22 25 been through several funds that we had set up. We were

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12:30:24 1 in the process of -- in this August here as we just  
12:30:28 2 talked about earlier, process of getting the dGRD term  
12:30:32 3 sheet into a compliant -- securities compliant fund.

12:30:36 4 So, yeah, it wouldn't surprise me at all if  
12:30:40 5 discussions around, you want the term loans or loans or  
12:30:44 6 anything else came up during those periods.

12:30:47 7 Q. (BY MR. NASSE) Yeah. And again, I mean, I  
12:30:48 8 think you answered my -- I didn't ask you whether it  
12:30:50 9 would surprise you. I asked if there's any specific  
12:30:53 10 recollection of any discussion regarding loans previous  
12:30:55 11 to 2015 for Policy Services or any of its affiliated  
12:30:59 12 businesses?

12:30:59 13 MR. HULINGS: I believe it's been asked and  
12:31:01 14 answered multiple times now.

12:31:05 15 THE WITNESS: I don't recall specifically.  
12:31:08 16 But I recall that we had conversations where that  
12:31:11 17 conversation could have come up as I've already  
12:31:13 18 answered.

12:31:13 19 Q. (BY MR. NASSE) Okay. And did you recall  
12:31:16 20 Carlile Patchen providing you any advice in terms of if  
12:31:19 21 you were going to take loans, what would be required in  
12:31:21 22 terms of disclosure or documentation?

12:31:23 23 MR. HULINGS: Objection; vague and  
12:31:26 24 compound.

12:31:27 25 But you can answer provided that it's prior

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12:31:28 1 to 2019.

12:31:31 2 Q. (BY MR. NASSE) Yes.

12:31:31 3 A. Sure. They provided advice and what the proper  
12:31:34 4 disclosures were for all of our documents and we relied  
12:31:38 5 on that.

12:31:39 6 Q. Yeah. Do you have a specific recollection of  
12:31:40 7 them providing that advice as it related to you taking  
12:31:44 8 out loans from Policy Services, Inc. or any of its  
12:31:47 9 affiliated businesses?

12:31:48 10 MR. HULINGS: Objection; vague.

12:31:50 11 THE WITNESS: If there was anything -- and  
12:31:52 12 I can't recall the specific, you know, PPMs that either  
12:31:54 13 are being referred here or after. But yes, if there  
12:31:56 14 were disclosures in that PPM regarding that, they either  
12:32:00 15 gave the advice that it was necessary to put it in or it  
12:32:02 16 was not necessary.

12:32:04 17 Q. (BY MR. NASSE) If you had a discussion?

12:32:05 18 A. We did have -- we did have discussions, as I  
12:32:07 19 said, regarding compensation and whether you want to  
12:32:12 20 term it as a loan, as payment, as a salary, whatever.

12:32:16 21 Q. Yeah. I specifically loan -- a loan is  
12:32:19 22 something you have to pay back. Compensation  
12:32:21 23 is something-- I mean, you're an attorney, Mr. Mueller,  
12:32:21 24 correct?

12:32:21 25 REPORTER: Is what?

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12:32:21 1 Q. (BY MR. NASSE) You're an attorney, right,  
12:32:26 2 Mr. Mueller?

12:32:26 3 A. I answered earlier on that I was.

12:32:28 4 Q. Okay. So you understand the difference between  
12:32:31 5 pay or compensation and a loan?

12:32:34 6 MR. HULINGS: Objection. It's actually  
12:32:38 7 vague.

12:32:38 8 But you can answer.

12:32:39 9 THE WITNESS: And argumentative. But with  
12:32:42 10 that said, I do understand that as a layperson. I don't  
12:32:45 11 know if being an attorney changes any of the insight  
12:32:50 12 into that.

12:32:51 13 Q. (BY MR. NASSE) So even better. So no legal  
12:32:53 14 conclusion.

12:32:54 15 So if it's -- do you ever recall any -- or  
12:32:57 16 any advice you received, specific advice from  
12:33:00 17 Mr. Concilla or Carlile Patchen regarding what was  
12:33:04 18 required if you wanted to take loans from Policy  
12:33:07 19 Services, Inc. or any of its affiliated businesses?

12:33:09 20 MR. HULINGS: So asked and answered, vague,  
12:33:12 21 argumentative. It's asked and answered several times.  
12:33:16 22 I don't know how many more times we're going to do this.

12:33:19 23 MR. NASSE: Well, the answers are not  
12:33:20 24 responsive. He's talking about --

12:33:20 25 MR. HULINGS: You may not like the answer,

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12:33:22 1 but you're getting an answer. And that's -- you may not  
12:33:24 2 like it, but you're getting an answer. You have asked  
12:33:27 3 the same question four times now.

12:33:29 4 MR. NASSE: I haven't got an answer.

12:33:31 5 Q. (BY MR. NASSE) Do you have any specific  
12:33:32 6 recollection of any advice you received regarding loans,  
12:33:35 7 not compensation or pay, specifically loans from -- you  
12:33:38 8 taking loans from Policy Service, Inc. or any of its  
12:33:43 9 affiliated enterprises?

12:33:43 10 MR. HULINGS: Same objections;  
12:33:46 11 argumentative, vague, asked and answered five times now.

12:33:50 12 THE WITNESS: We had wide-ranging  
12:33:51 13 discussions on a lot of issues including of course  
12:33:54 14 payments and anything that would be regarded payments as  
12:33:58 15 they would need to be disclosed or not in the PPMs.

12:34:10 16 MR. NASSE: Just note for the record  
12:34:11 17 nothing about loans in your answer.

12:34:13 18 MR. HULINGS: Move to strike.

12:34:14 19 MR. NASSE: I think we are -- I think we  
12:34:18 20 can take a break for lunch if you want. Off the record.

12:34:21 21 VIDEOGRAPHER: We are off the record at  
12:34:24 22 12:34 p.m.

12:34:25 23 (Brief recess.)

01:29:34 24 VIDEOGRAPHER: We are back on the record at  
01:29:56 25 1:30 p.m.



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01:32:16 1 offering details and there's a paragraph number 15.

01:32:20 2 Do you see where I'm at?

01:32:21 3 A. Yes.

01:32:21 4 Q. And you see there's the second sentence says,

01:32:24 5 (Reading:) The fund advisor or managers retain sole and

01:32:28 6 absolute discretion over due diligence purchase and

01:32:29 7 maintenance of the assets.

01:32:30 8 Do you see that?

01:32:32 9 A. I do.

01:32:32 10 Q. Okay. And you were the manager of the 575 Fund?

01:32:35 11 A. Yes.

01:32:36 12 Q. Was there a separate fund advisor for 575 Fund?

01:32:42 13 A. Not to my recollection.

01:32:47 14 Q. If you could go to paragraph -- so it's page  
01:33:01 15 ending in Bates 4 -- 504. And there's a paragraph F at  
01:33:14 16 the top of that page.

01:33:15 17 Do you see that?

01:33:16 18 A. Yes.

01:33:17 19 Q. And just go ahead and you can review that  
01:33:28 20 paragraph. Just let me know when you're done.

01:33:35 21 A. Okay.

01:33:54 22 Q. Okay. Do you recall receiving advice from  
01:33:59 23 Carlile Patchen or any other counsel specifically as  
01:34:02 24 related to the text in paragraph F?

01:34:08 25 A. My recollection is that all -- all these

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01:34:11 1 paragraphs in this section came in one form or another  
01:34:15 2 from -- you said CPM or Carlile Patchen & Murphy, yes.

01:34:22 3 Q. Okay. Do you recall any specific conversations  
01:34:24 4 or -- with -- I'll use your term, CPM, regarding the  
01:34:30 5 text of paragraph F?

01:34:32 6 A. I know that we had conversations about all of  
01:34:38 7 these. I cannot remember specifically what was said.

01:34:41 8 Q. In your conversations regarding this PPM, do  
01:34:47 9 you recall any specific conversations with CPM regarding  
01:34:54 10 your ability to take loans from Policy Services or any  
01:34:59 11 of its affiliated entities?

01:35:01 12 MR. HULINGS: So objection; vague as to  
01:35:03 13 loans and asked and answered.

01:35:13 14 THE WITNESS: Sorry. I don't see anything  
01:35:15 15 about loans in this paragraph.

01:35:16 16 Q. (BY MR. NASSE) Yeah, in general, in connection  
01:35:18 17 with drafting this PPM for 575.

01:35:21 18 A. So, like, the previous questions before we took  
01:35:22 19 a break and --

01:35:23 20 Q. Well, I'm asking specific as to this document.

01:35:27 21 A. It would be the same answer that I've answered  
01:35:29 22 those -- that question multiple times.

01:35:32 23 Q. And in your conversations about paragraph F,  
01:35:41 24 which it said some agreements, including those involving  
01:35:44 25 compensation, are not arm's length, did you discuss with

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02:24:00 1 Q. You said this discussion is in an email?

02:24:02 2 A. It started with an email and the discussion was  
02:24:04 3 as we went to the Pinball PPM --

02:24:07 4 Q. Again, and my question is: Is there discussion  
02:24:10 5 of nominal administration expenses are used in that term  
02:24:12 6 in an email?

02:24:13 7 MR. HULINGS: Asked and answered.

02:24:15 8 THE WITNESS: I can't recall if it's in an  
02:24:17 9 email or if it was verbal. But it happened many, many  
02:24:23 10 times so I'm sure there's likely an email out there, I  
02:24:25 11 just -- I don't know without going back and looking.

02:24:28 12 Q. (BY MR. NASSE) And in those discussions did  
02:24:31 13 you ask Carlile Patchen whether the term "nominal  
02:24:35 14 administration expenses" could cover priority return  
02:24:39 15 payments to investors?

02:24:42 16 A. My understanding in the advice I received is  
02:24:48 17 that 575 payment -- 575 P payments due investors are  
02:24:52 18 expenses of the fund and they would be included.

02:24:55 19 Q. Okay. So there -- so Carlile Patchen told you  
02:24:59 20 that nominal administration expenses, that provision  
02:25:02 21 could be used to pay prior to return payments to 575  
02:25:07 22 Fund investors?

02:25:09 23 A. Over the multiple times we did it in one form  
02:25:12 24 or another, yes.

02:25:13 25 Q. What do you mean by "one form or another"?

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02:25:16 1 A. Well, I mean, administration expenses is pretty  
02:25:20 2 broad and that's intentionally why they wanted it. And  
02:25:24 3 as I've testified before with -- we didn't hide anything  
02:25:29 4 from Dennis and Andy. And in their view being compliant  
02:25:35 5 with securities laws and in their view of proper  
02:25:40 6 disclosure to investors, they took a much longer section  
02:25:44 7 than this that was proposed previously and they boiled  
02:25:47 8 it down to this abbreviated by boiling a lot of the  
02:25:52 9 other stuff down to nominal administration expenses.

02:25:56 10 Q. I just want to make sure I understand. What  
02:25:59 11 did you ask them about nominal administration expenses  
02:26:02 12 as related to payments of priority return payments to  
02:26:06 13 575 Fund investors?

02:26:07 14 MR. HULINGS: Asked and answered.

02:26:08 15 THE WITNESS: I mean, I have answered that,  
02:26:11 16 is that a wide-ranging area and an amount of expenses  
02:26:19 17 that could come up, especially down the road, were  
02:26:23 18 talked about and they boiled them down to nominal  
02:26:27 19 administration expenses.

02:26:28 20 Q. (BY MR. NASSE) And those wide-ranging things,  
02:26:30 21 among those was specifically mentioned priority return  
02:26:35 22 payments to 575 investors?

02:26:36 23 MR. HULINGS: Asked and answered.

02:26:38 24 THE WITNESS: Dividends, maturities, yes,  
02:26:41 25 payments to investors were expenses of the fund and

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02:26:44 1 those would be included in that.

02:26:45 2 Q. (BY MR. NASSE) Prior to return payments?

02:26:45 3 A. That's what I just said.

02:26:45 4 Q. MR. NASSE: Well, You said dividends.

02:26:49 5 THE WITNESS: Sorry, I should have waited.

02:26:51 6 MR. HULINGS: Asked and answered. Go

02:26:53 7 ahead.

02:26:53 8 Q. (BY MR. NASSE) And when -- do you have a

02:26:54 9 recollection of when that conversation occurred?

02:26:56 10 A. That's also been asked and answered and we did

02:26:59 11 it over a long period of time because this was a very

02:27:01 12 key area of the PPM and it started again with the email

02:27:07 13 where I was pointing out that Russ had left and I was

02:27:11 14 pointing out here's where we are. We need to find a

02:27:16 15 solution to where we're going to accomplish our goals,

02:27:18 16 take care of investors.

02:27:20 17 And so this is what started the very, very

02:27:24 18 lengthy discussion and vetting of different fund designs

02:27:28 19 and the language, proper disclosures that should go in

02:27:33 20 there between that time period.

02:27:35 21 Q. And you say "lengthy discussion." That was a

02:27:38 22 discussion in person, over the phone?

02:27:39 23 A. Emails, phone, everything we talked about

02:27:41 24 before, trading back and forth and changes in the

02:27:44 25 documents.

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02:27:46 1 Q. Well, let's start with phone conversations.

02:27:52 2 Do you have a recollection of any phone  
02:27:55 3 conversations where you specifically mentioned paying  
02:28:00 4 priority return payments to -- under the revision of  
02:28:05 5 nominal administrative expenses?

02:28:06 6 MR. HULINGS: I think that's been asked and  
02:28:08 7 answered --

02:28:08 8 MR. NASSE: I'm asking for phone  
02:28:08 9 conversations.

02:28:08 10 MR. HULINGS: Are you asking for a specific  
02:28:08 11 date or a date range?

02:28:10 12 MR. NASSE: Any phone -- do you recall any  
02:28:11 13 specific phone conversations, and if he does, then I'll  
02:28:14 14 ask the date.

02:28:15 15 THE WITNESS: Most of our conversations  
02:28:17 16 during that period were phone conversation so it would  
02:28:19 17 have been a good majority of them.

02:28:25 18 Q. (BY MR. NASSE) And sitting here today, do you  
02:28:26 19 have any recollection of emails where specifically the  
02:28:29 20 issue of paying nominal administrative expenses, using  
02:28:34 21 that provision to pay 575 Fund investors?

02:28:38 22 A. I don't know without going back. I know this  
02:28:41 23 provision was boiled down, so I'd have to -- I don't  
02:28:43 24 know if it was specifically mentioned in the email or if  
02:28:46 25 it was in the tracking for the editing of the document

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02:28:50 1 that was attached to an email. I just can't recall  
02:28:54 2 without looking back.

02:28:55 3 Q. Okay. Did -- regardless of -- not even in the  
02:29:27 4 context of nominal administrative expenses, did Carlile  
02:29:31 5 Patchen ever advise you that it was permissible to pay  
02:29:34 6 existing investors with new investor investments?

02:29:41 7 A. Yes.

02:29:42 8 Q. When did that occur?

02:29:44 9 A. It occurred continuously throughout the  
02:29:48 10 representation, including after the privilege waiver  
02:29:51 11 date.

02:29:52 12 MR. HULINGS: Let's not discuss anything  
02:29:53 13 after the privilege waiver date. You're instructed not  
02:29:58 14 to answer anything about after the privilege waiver  
02:30:01 15 date.

02:30:01 16 Q. (BY MR. NASSE) Not asking you anything about  
02:30:03 17 after December 2019, when did you have conversation  
02:30:08 18 where Carlile Patchen advised you that it was  
02:30:10 19 permissible to pay existing investor with new investor  
02:30:16 20 investments?

02:30:17 21 A. We had many conversations about the reality of  
02:30:20 22 being an issuer and complying with securities laws. And  
02:30:28 23 Dennis was very adamant during a lot of these  
02:30:30 24 conversations including about this provision that money  
02:30:32 25 was fungible, it's common sense as well.

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02:30:36 1 And a lot of our discussions, when it came  
02:30:38 2 into, like, disclosure of this, what the process would  
02:30:41 3 be, what the internal controls would be, were around  
02:30:44 4 that concept that Dennis kept coming back to as one of  
02:30:48 5 his -- his major themes.

02:30:50 6 Q. And it was permissible?

02:30:51 7 A. It's an expense of the fund.

02:30:54 8 Q. Did you -- did you ever ask Mr. Concilla or  
02:30:59 9 anyone at Carlile Patchen whether doing so would be  
02:31:02 10 Ponzi scheme?

02:31:03 11 MR. HULINGS: Objection; vague, and legal  
02:31:05 12 conclusion as to "Ponzi scheme."

02:31:08 13 But you can answer.

02:31:09 14 THE WITNESS: I believe there's an email.  
02:31:10 15 We might have even reviewed -- that was disclosed, we  
02:31:14 16 might have even reviewed it already where Dennis gave a  
02:31:18 17 brief example of a Ponzi scheme. So no, he did not  
02:31:21 18 consider what we were doing or any of the disclosures or  
02:31:27 19 our internal processes or controls a Ponzi scheme.

02:31:31 20 Q. (BY MR. NASSE) Okay. We can go back. I  
02:31:32 21 believe he says -- he discusses what are the hallmarks  
02:31:35 22 of a Ponzi scheme. Does that sound right?

02:31:38 23 A. I believe he discusses in context to that email  
02:31:42 24 a -- one of the elements of a Ponzi scheme as I  
02:31:47 25 understand it and as it related to that specific



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03:40:28 1 not.

03:40:29 2 So to the extent -- so that might be  
03:40:32 3 outside of our privilege waiver. To the extent --  
03:40:35 4 depending on how you're asking it.

03:40:36 5 MR. NASSE: Yeah, I would just note for the  
03:40:38 6 record we disagree because this reflects a state of mind  
03:40:42 7 of what he knew as it related to the 575 funds even if it  
03:40:45 8 was in the context of the S-1. I know that's not  
03:40:48 9 your -- that you disagree, your position, but I just  
03:40:50 10 want to make that clear for the record.

03:40:52 11 MR. HULINGS: I don't know that that's an  
03:40:53 12 accurate description of our record. But we agree that  
03:40:56 13 we disagree.

03:41:00 14 Q. (BY MR. NASSE) So I can repeat the question if  
03:41:01 15 you want, Mr. Mueller, or if you cannot answer --

03:41:04 16 MR. HULINGS: Go ahead and repeat it and  
03:41:06 17 I'll decide whether to instruct.

03:41:09 18 Q. (BY MR. NASSE) Did you discuss the  
03:41:11 19 paragraph -- the header "inter-fund pool" in Exhibit 37  
03:41:15 20 with Carlile Patchen?

03:41:17 21 MR. HULINGS: So you are instructed to  
03:41:24 22 answer -- you are instructed not to answer to the extent  
03:41:27 23 that the communication is outside of discussions  
03:41:30 24 regarding PPMs or other disclosures to investors.

03:41:35 25 THE WITNESS: I don't recall.

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03:41:49 1 MR. NASSE: Okay. Tab 31.

03:42:12 2 MR. HULINGS: Not Exhibit 31, tab 3 is --

03:42:15 3 MR. NASSE: It will be Exhibit 38.

03:42:15 4 MR. HULINGS: Got it.

03:42:17 5 MR. NASSE: I've got a document with a  
03:42:19 6 title, "Investment Allocation Agreement."

03:42:37 7 (Exhibit 38 was marked.)

03:42:44 8 Q. (BY MR. NASSE) Mr. Mueller, do you recognize  
03:42:45 9 what's been marked as Exhibit 31 [sic]?

03:42:47 10 A. I'm sorry. I couldn't hear.

03:42:48 11 Q. I apologize. Do you recognize the document  
03:42:51 12 that's been put before you marked as Exhibit 38?

03:42:55 13 A. It appears to be the investment allocation  
03:42:58 14 agreement between deeproot Funds and deeproot Tech.

03:43:02 15 Q. Did you write this agreement?

03:43:05 16 A. I edited this agreement.

03:43:08 17 Q. Who initially drafted this agreement?

03:43:12 18 A. The template was from our first attorney on an  
03:43:20 19 advisory form, if I remember correctly. And I edited it  
03:43:25 20 and then sent it off for approval.

03:43:31 21 Q. By "sent it off for approval," do you mean sent  
03:43:34 22 it off to Carlile Patchen?

03:43:36 23 MR. HULINGS: So communications regarding  
03:43:38 24 the investment allocation agreement are outside of the  
03:43:41 25 existing privilege waiver unless they relate to the

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03:43:45 1 disclosures in the 575 or dGRD. Whether or not the --  
03:43:53 2 the fact of whether or not you discussed the investment  
03:43:55 3 allocation agreement is the sort of thing that would be  
03:43:59 4 in a privilege log, so that's not privileged. You can  
03:44:02 5 state that. But you're instructed not to reveal any  
03:44:05 6 communications regarding the investment allocation  
03:44:08 7 agreement with Carlile Patchen.

03:44:15 8 Q. (BY MR. NASSE) I just point to the last page  
03:44:16 9 of this document. It's Exhibit A and there are funds  
03:44:19 10 listed. Do you see there? And among those funds listed  
03:44:23 11 are deeproot 575 Fund and deeproot Growth Run's Deep  
03:44:26 12 Fund; is that right?

03:44:28 13 A. I see that.

03:44:29 14 Q. So investment allocation fund relates to those  
03:44:33 15 two funds; is that correct?

03:44:34 16 MR. HULINGS: Document speaks for itself,  
03:44:36 17 objection.

03:44:36 18 MR. NASSE: My question for counsel is: Do  
03:44:38 19 you still maintain the instruction given that --

03:44:40 20 MR. HULINGS: Yeah, because it's -- I mean,  
03:44:42 21 look. We've got a written privilege waiver. It  
03:44:44 22 concerns communications -- the privilege waiver -- I  
03:44:47 23 know, hold on -- involves drafting of PPMs and other  
03:44:51 24 materials provided to investors.

03:44:53 25 And to the extent the communications about

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03:44:57 1 the investment allocation agreement with Carlile Patchen  
03:44:59 2 concern disclosures in PPMs or materials from investors,  
03:45:05 3 then it is covered by the waiver. Otherwise, it is not.

03:45:10 4 MR. NASSE: Yeah. I think we need to go  
03:45:11 5 off the record.

03:45:11 6 MR. HULINGS: Okay. Let me -- let me just  
03:45:13 7 clarify with him whether or not that --

03:45:15 8 MR. NASSE: Yeah, but --

03:45:17 9 VIDEOGRAPHER: We are off the record at  
03:45:18 10 3:45 p.m.

03:45:20 11 (Discussion off the record.)

03:47:47 12 VIDEOGRAPHER: We are back on the record at  
03:47:54 13 3:48 p.m.

03:47:55 14 Q. (BY MR. NASSE) Mr. Mueller, did you discuss  
03:47:58 15 the investment allocation agreement that's been marked  
03:48:00 16 as Exhibit 38 with Carlile Patchen?

03:48:03 17 MR. HULINGS: All right. And so pursuant  
03:48:06 18 to our privilege waiver, Mr. Mueller's privilege waiver,  
03:48:10 19 I'm instructing him to answer only if you discussed the  
03:48:12 20 investment allocation agreement in the context of  
03:48:15 21 discussions concerning disclosures in PPMs or other  
03:48:19 22 disclosures to investors.

03:48:20 23 If it is outside of -- if the  
03:48:24 24 communications with Carlile Patchen do not relate to  
03:48:26 25 PPMs or disclosures to investors, then you're instructed

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03:48:30 1 not to answer.

03:48:32 2 MR. NASSE: And just for the record, we

03:48:34 3 disagree with that characterization of the privilege.

03:48:36 4 Go for it.

03:48:37 5 MR. HULINGS: You can answer.

03:48:38 6 THE WITNESS: Do I get to answer? Okay. I

03:48:41 7 know this was sent to them. I do not recall ever

03:48:44 8 discussing it in detail with them. Might have happened.

03:48:47 9 I don't recall.

03:48:48 10 Q. (BY MR. NASSE) All right. Was -- to your

03:48:49 11 knowledge, was the investment allocation agreement ever

03:48:51 12 provided to investors?

03:48:54 13 A. I believe that conversation came up and, no, we

03:49:07 14 did not due to that conversation.

03:49:10 15 Q. A conversation with Carlile Patchen?

03:49:12 16 A. Yes.

03:49:13 17 Q. When did that conversation occur?

03:49:14 18 A. It would have occurred around this time period,

03:49:20 19 I'm sure.

03:49:20 20 Q. And you had it with Mr. Concilla and

03:49:22 21 Mr. Federico or just one?

03:49:24 22 A. I don't remember.

03:49:25 23 Q. Okay. Do you remember if that conversation was

03:49:26 24 over the phone or an email?

03:49:29 25 A. I don't remember if it was email or phone.

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03:55:12 1 A. They don't appear to be cc'd on here. But yes,  
03:55:20 2 I recall that -- that at least the finder, training for  
03:55:30 3 finders was at least presented to them at one point, I  
03:55:33 4 don't recall, it was more like a notice, if I recall  
03:55:37 5 correctly. But the investor presentation was actually  
03:55:40 6 sent to them for -- for approval.

03:55:44 7 In other words, there were several  
03:55:45 8 different versions of it, but at some point, I don't  
03:55:48 9 know if it was this specific one.

03:55:50 10 Q. Excuse me. Yeah. We'll get to the investor  
03:55:54 11 presentation. But my question was: Do you have a  
03:55:58 12 recollection of this version of the presentation being  
03:56:01 13 shared with Carlile Patchen?

03:56:02 14 A. I do not recall.

03:56:03 15 Q. Okay. If you go to page ending in 6744.

03:56:25 16 A. Okay.

03:56:25 17 Q. Do you see under class B shares the last bullet  
03:56:29 18 says, (Reading:) All principle is securitized or backed  
03:56:32 19 up by the assets of the company.

03:56:35 20 Do you see that?

03:56:36 21 A. I see that.

03:56:37 22 Q. Do you recall discussing that language with  
03:56:39 23 Carlile Patchen?

03:56:41 24 A. I believe it's in the PPM, so, yes.

03:56:49 25 Q. You believe that sentence is in the PPM?

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04:10:50 1 A. If it states that, then that was the intent to  
04:10:53 2 state when it was first ready for subscription.

04:10:57 3 Q. Okay. And did you seek legal advice from  
04:11:02 4 Carlile Patchen in connection with this PPM as marked  
04:11:06 5 Exhibit 6?

04:11:07 6 A. I don't recall.

04:11:07 7 Q. Okay.

04:11:19 8 A. I mean, we -- at this point, y'all had  
04:11:21 9 subpoenaed the deeproot companies. And so I don't  
04:11:25 10 believe there's --

04:11:26 11 MR. HULINGS: Hold on. So it's a fair  
04:11:29 12 point at this point, do you mean February 26, 2018 or  
04:11:33 13 January 1, 2021? If you can clarify that, that will  
04:11:36 14 affect the issues.

04:11:39 15 Q. (BY MR. NASSE) Yeah, in February or  
04:11:41 16 thereabouts in February of 2018, did you seek Carlile  
04:11:45 17 Patchen's advice regarding this PPM?

04:11:47 18 A. I don't recall specifically.

04:11:48 19 Q. Okay. Why issue the class C membership shares?

04:12:03 20 MR. HULINGS: Hold on. Objection; vague.  
04:12:07 21 You can answer.

04:12:08 22 THE WITNESS: The class C membership shares  
04:12:11 23 were meant for institutional funds versus retail funds  
04:12:15 24 like the class B. I believe somewhere in there it  
04:12:18 25 states it.

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04:21:46 1 Q. Do you recall them ever telling you you could?

04:21:48 2 A. I don't recall either way.

04:21:50 3 Q. Okay. And you -- I just want to -- you have no  
04:21:55 4 recollection of discussing this specific sentence  
04:21:58 5 regarding "raid the piggy bank" with Carlile Patchen?

04:22:00 6 A. Well, y'all false pled that in your complaint  
04:22:03 7 about what the context of that statement actually meant.  
04:22:07 8 And here it was specifically meant and is an industry  
04:22:10 9 term for going to the life policy and drawing out the  
04:22:14 10 cash value of a life policy, which we've never done.  
04:22:18 11 And so it was appropriate language for the context and  
04:22:23 12 the meaning it was meant -- meant to talk about here in  
04:22:27 13 this section.

04:22:29 14 MR. NASSE: Yeah, we'll strike the  
04:22:29 15 commentary on the complaint. You can save that for your  
04:22:32 16 pleadings.

04:22:34 17 Q. (BY MR. NASSE) Was -- did you discuss in --  
04:22:45 18 when preparing that sentence or working on that sentence  
04:22:47 19 the fact that you were the sole owner of Policy  
04:22:56 20 Services, Inc. and all the other entities?

04:22:58 21 MR. HULINGS: Objection; vague.

04:22:59 22 Q. (BY MR. NASSE) Let me rephrase. Let me  
04:23:01 23 rephrase.

04:23:01 24 In preparing -- in writing -- or in -- let  
04:23:04 25 me say, in including this sentence in this PPM that's in

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04:23:09 1 Exhibit 5, did you discuss with anyone the fact that you  
04:23:13 2 owned -- solely owned Policy Services, Inc. or all the  
04:23:17 3 other deeproot subsidiaries and affiliates?

04:23:21 4 A. I don't recall that specific phrase or topic  
04:23:28 5 ever came up.

04:23:29 6 Q. Okay. So how does the fact that the Policy  
04:23:41 7 Services holds the life policies prevent whoever is  
04:23:48 8 referred to as "we" here from raiding the piggy bank?

04:23:52 9 MR. HULINGS: I'm going to object to vague  
04:23:57 10 from following that question. It's also asking him to  
04:24:00 11 interpret the document. Maybe asking for a legal  
04:24:04 12 conclusion.

04:24:06 13 THE WITNESS: I think it speaks for itself.  
04:24:07 14 I mean, this has been vetted by very competent parties,  
04:24:16 15 including FactRight, including Folio, which is now  
04:24:16 16 Goldman Sachs, including the professionals I've talked  
04:24:18 17 about before in counsel. I would have to believe that  
04:24:23 18 all of them found that this language was appropriate and  
04:24:25 19 descriptive and proper in their respective fields.

04:24:29 20 Q. (BY MR. NASSE) But you testified you didn't  
04:24:31 21 recall whether you sought or received Carlile Patchen  
04:24:37 22 advice regarding this PPM in general or this specific  
04:24:39 23 sentence.

04:24:40 24 A. I don't believe that was my testimony. I don't  
04:24:42 25 recall this specific sentence or this section about what

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04:24:46 1 we specifically discussed or not discussed. This, like  
04:24:49 2 everything else, was very collaborative back and forth  
04:24:52 3 with lots of edits.

04:24:54 4 Q. Just for the record, you did testify you didn't  
04:24:56 5 recall whether Carlile Patchen provided you any advice  
04:24:59 6 in connection with this PPM.

04:25:01 7 A. I believe -- I did say that, but in a different  
04:25:09 8 context than you're using it now. In the context of the  
04:25:13 9 language that's in this PPM, it's very different.

04:25:18 10 Q. You refer to "piggy bank" as an industry term.  
04:25:22 11 What does piggy bank mean as far as you're saying it's  
04:25:25 12 an industry term?

04:25:26 13 A. So raiding the piggy bank, when it comes to  
04:25:28 14 life insurance policies, is taking or robbing the policy  
04:25:31 15 of its cash value, usually with universal policies and  
04:25:40 16 whole life.

04:25:40 17 Q. And explain to me how the structure of Policy  
04:25:44 18 Services, Inc. in connection with 575 Fund prevents  
04:25:56 19 robbing the piggy bank or raiding the piggy bank?

04:26:00 20 MR. HULINGS: You can answer.

04:26:00 21 THE WITNESS: I think it speaks for itself.

04:26:02 22 Q. (BY MR. NASSE) Maybe explain it to me because  
04:26:03 23 I don't understand it.

04:26:04 24 A. Well, you're asking me to interpret this  
04:26:06 25 document and I think it speaks for itself in terms of

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04:26:10 1 the entire paragraph talking about the illiquidity. I  
04:26:16 2 mean, life insurance policies are not liquid that I  
04:26:21 3 understand with the exception of three events. And what  
04:26:25 4 we're talking about here throughout the whole paragraph  
04:26:29 5 is that fact.

04:26:34 6 Q. Correct me if I'm wrong. You stated that the  
04:26:36 7 term -- or the phrase "raid the piggy bank" refers to  
04:26:40 8 robbing life policies of their cash value.

04:26:43 9 A. Correct.

04:26:43 10 Q. My question is: How does the structure of  
04:26:46 11 Policy Services, Inc. as discussed in this paragraph,  
04:26:49 12 prevent stealing the cash value from life policies?

04:26:54 13 A. Again, I'm going to answer -- sorry if there's  
04:26:58 14 an objection. But again, I'm going to answer the same  
04:27:01 15 as I did before. I think that sentence speaks for  
04:27:03 16 itself.

04:27:04 17 Q. I'm not --

04:27:11 18 MR. HULINGS: Before you go on.

04:27:13 19 Q. (BY MR. NASSE) Let me --

04:27:14 20 MR. HULINGS: Maybe we can take a break and  
04:27:17 21 we can consult for a second and then we can come back.

04:27:20 22 MR. NASSE: Sure. Go off the record.

04:27:23 23 VIDEOGRAPHER: We're off the record at  
04:27:25 24 4:29 p.m.

04:27:26 25 (Brief recess.)

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04:32:58 1 VIDEOGRAPHER: We are back on the record at  
04:33:09 2 4:33 p.m.

04:33:10 3 Q. (BY MR. NASSE) Mr. Mueller, what processes or  
04:33:11 4 procedures did you put in place to ensure you weren't  
04:33:17 5 able to, quote, raid the piggy bank?

04:33:20 6 MR. HULINGS: Vague as "processes" and  
04:33:23 7 "procedures."

04:33:23 8 But you can answer.

04:33:24 9 THE WITNESS: Again, raid the piggy bank  
04:33:27 10 means to take out the cash value and to use it, possibly  
04:33:35 11 threatening the either lapse or something else of the  
04:33:39 12 policy -- damage to the policy, and to minimize the  
04:33:44 13 illustration of the under -- and underwriting of the  
04:33:48 14 policy, something that we never did.

04:33:55 15 Q. (BY MR. NASSE) Right. The question: Were  
04:33:56 16 there any processes or procedures you had in place to  
04:34:00 17 prevent that?

04:34:01 18 MR. HULINGS: Same objection.

04:34:02 19 But you can answer.

04:34:02 20 THE WITNESS: I controlled Policy Services  
04:34:05 21 and I was the fund manager for the 575. I knew  
04:34:11 22 whether through my own knowledge about the dangers of  
04:34:12 23 doing that and through advice of counsel and working  
04:34:15 24 through this S-1 process that we're not going to do it.  
04:34:19 25 We disclose to investors we're not going to do it.

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04:34:22 1 Q. (BY MR. NASSE) So it was your discretion?

04:34:24 2 A. I don't know about my discretion. It's  
04:34:27 3 something that I never did and I never would do. And  
04:34:29 4 that's why we talked about that a lot of companies who  
04:34:36 5 were the owners and held policies for the benefit of  
04:34:39 6 others had done this historically.

04:34:42 7 I believe we talked about life partners in  
04:34:45 8 the last -- there's many others in the last -- of the  
04:34:48 9 transcript. But there's many others. Our point here  
04:34:51 10 was to talk about the illiquidity and that all policies  
04:34:56 11 were held by Policy Services. As you can see there  
04:35:00 12 under the sole affiliated policy administration  
04:35:02 13 provider, as we've talked about earlier today, that we  
04:35:06 14 are unable to raid the piggy bank mainly because legal  
04:35:10 15 advice not to do so, financial advice not to do so, and  
04:35:13 16 I was never going to do it.

04:35:15 17 Q. So it was based on legal advice; you weren't  
04:35:23 18 going to do it. You said a third thing.

04:35:26 19 A. Financial advice.

04:35:27 20 Q. Financial advice. When you say here -- it says  
04:35:33 21 in this document, in this sentence, (Reading:) By using  
04:35:39 22 our ultimate parent Policy Services Inc. or so  
04:35:43 23 affiliated policy administration between us and the  
04:35:46 24 insurance cancel, we are unable to raid the piggy bank.

04:35:53 25 What -- what was preventing you from

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04:35:56 1 raiding the piggy bank as described in that sentence?

04:36:03 2 MR. HULINGS: So objection to the extent  
04:36:04 3 that you're asking for legal interpretation of the  
04:36:06 4 document.

04:36:07 5 You can answer to the extent you can.

04:36:11 6 THE WITNESS: I don't think we were trying  
04:36:12 7 to convey what you're trying to convey here in your  
04:36:15 8 context. However, at the end of the day I was. I was  
04:36:18 9 the barrier and I did exactly as we told investors that  
04:36:22 10 we would do in that I did not ever raid the piggy bank.

04:36:27 11 Q. (BY MR. NASSE) Did you ever have discussions  
04:36:32 12 with Carlile Patchen whether the fact that you were the  
04:36:34 13 barrier and there were no other procedures was  
04:36:38 14 sufficiently disclosed in this PPM?

04:36:40 15 A. That would have gone back to wide-ranging  
04:36:43 16 discussions during the drafting and advice and counsel  
04:36:48 17 around that for the DRS and S-1.

04:36:51 18 Q. But no discussion that you can recall as to the  
04:36:57 19 PPM here as reflected in Exhibit 5?

04:37:03 20 MR. HULINGS: So object as to vagueness  
04:37:05 21 with discussion of particular date. I mean, date range,  
04:37:09 22 what -- vague as to --

04:37:12 23 Q. (BY MR. NASSE) Sure. I'll rephrase the  
04:37:13 24 question.

04:37:15 25 You said -- and correct me if I'm wrong, I

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04:37:18 1 believe your testimony is that you received that in the  
04:37:21 2 context of the DRS for the Queue fund.

04:37:25 3 My question is: Did you receive any advice  
04:37:27 4 as to the fact that you, as you said, were the barrier  
04:37:31 5 was sufficiently disclosed in the PPM that as marked as  
04:37:38 6 Exhibit 5?

04:37:39 7 A. I don't know if I understand the question.  
04:37:46 8 What I've answered before is that Dennis and Andy had  
04:37:50 9 intimate knowledge of everything we did. Had been  
04:37:52 10 working with us for years. I don't recall specifically,  
04:37:55 11 but sometimes when you just know something and trust  
04:37:58 12 somebody and you're providing counsel and advice to  
04:38:02 13 them, sometimes it doesn't even need to be said. But I  
04:38:08 14 can't recall.

04:38:09 15 Q. Tab 37. I'll mark as Exhibit 40 a document,  
04:39:03 16 Assets Backing Up Investments, dated April 1, 2019.

04:39:07 17 (Exhibit 40 was marked.)

04:39:26 18 Q. (BY MR. NASSE) Mr. Mueller, do you recognize  
04:39:28 19 the document that's been marked as Exhibit 40?

04:39:32 20 A. I recall that -- as it states on the top, that  
04:39:40 21 we had created this for maybe at the request of an agent  
04:39:45 22 or finder.

04:39:46 23 Q. Okay. And when you say, "we," do you mean you  
04:39:50 24 or who else -- what do you mean by "we"?

04:39:52 25 A. My recollection, especially with the date, is

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05:03:17 1 forced our hand and so we had little option.

05:03:20 2 Q. And at the time in the April 2019 time frame,  
05:03:26 3 did you discuss with Carlile Patchen whether the  
05:03:29 4 surrender of the Basha policy had to be disclosed to  
05:03:31 5 investors?

05:03:32 6 A. I don't remember discussing with them about  
05:03:35 7 that specific issue.

05:03:36 8 Q. Okay. Excluding any consultations with counsel  
05:03:40 9 after December 20, 2019, did you ever have conversations  
05:03:50 10 with Carlile Patchen regarding whether you had to  
05:03:52 11 disclose the surrender of the Basha policy to investors?

05:03:56 12 A. Could you repeat the question?

05:03:58 13 Q. Sure.

05:03:58 14 A. I'm sorry.

05:03:59 15 Q. Excluding any communications that occurred  
05:04:04 16 after December 20, 2019, did you have any conversations  
05:04:08 17 with Carlile Patchen seeking their advice as to whether  
05:04:10 18 you had to disclose the surrender of the Basha policy to  
05:04:15 19 investors?

05:04:15 20 A. So I'm understanding you meaning the dates,  
05:04:17 21 that was there any discussion before that date?

05:04:19 22 Q. Correct.

05:04:20 23 A. I do not remember or recall.

05:04:21 24 Q. Okay. Did you or the deeproot companies  
05:04:24 25 disclose to investors the surrender of the Basha policy?



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05:24:56 1 THE WITNESS: That's sort of a compound so  
05:24:58 2 I'll address the first one is, did we surrender policy  
05:25:02 3 under the agreement that we were provided by Tom and his  
05:25:04 4 counsel? Yes, we did that. I think we talked about  
05:25:08 5 that before. It was about a week later.

05:25:10 6 Did we tell investors at the time there was  
05:25:13 7 no default? We didn't expect there to be a fault, we  
05:25:16 8 had no notice or otherwise that we weren't going to get  
05:25:20 9 our full money back so, no, we did not since there was  
05:25:23 10 no default and again, my reading of the PPM there was no  
05:25:27 11 duty to disclose.

05:25:29 12 Q. (BY MR. NASSE) And again, that was your  
05:25:31 13 understanding of your duty to disclose?

05:25:34 14 A. I was reading the PPM just like you can.

05:25:37 15 Q. Okay. And not from what you've been told --  
05:25:40 16 what you understood your duty was based on advice of  
05:25:43 17 counsel?

05:25:44 18 A. Again, I don't --

05:25:46 19 MR. HULINGS: Go ahead.

05:25:47 20 Q. (BY MR. NASSE) I'm not asking you for any  
05:25:49 21 communications you had with Mr. McKinnie.

05:25:52 22 A. As to CPM, as I already answered, I don't  
05:25:56 23 recall ever going to them and asking them about that  
05:25:59 24 specific topic.

05:26:06 25 MR. NASSE: We can take a break. We can go

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06:46:23 1 trying to keep track of time.

06:46:25 2 Q. (BY MR. NASSE) I'll hand you what's been  
06:46:35 3 previously marked as Exhibit 25, the investment  
06:46:49 4 portfolio narrative.

06:47:05 5 Mr. Mueller, do you recognize what's been  
06:47:07 6 marked as 25?

06:47:08 7 A. I believe it's the same thing that we were  
06:47:10 8 talking about before. It was when you asked the  
06:47:12 9 question about its inception. And based upon what's  
06:47:15 10 written here as well as the questions that Nate and  
06:47:19 11 Scott got received and passed on to me that I drafted  
06:47:23 12 this.

06:47:23 13 Q. Okay. Did you consult with counsel in drafting  
06:47:38 14 this?

06:47:39 15 A. I don't recollect -- sorry.

06:47:39 16 MR. HULINGS: It's outside the scope of the  
06:47:41 17 waiver. But you can -- I think you can disclose whether  
06:47:43 18 or not you discussed the subject with counsel and  
06:47:46 19 whether or not you remember that without revealing the  
06:47:49 20 content of any communications that you may have had with  
06:47:52 21 any attorneys.

06:47:54 22 THE WITNESS: I'm sure most of the things  
06:47:57 23 in here I had discussed with Andy and Dennis many times  
06:48:00 24 before and they already knew. But I cannot recall if I  
06:48:04 25 specifically discussed this with Dennis and Andy.

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07:33:43 1 "written approval."

07:33:45 2 Q. (BY MR. NASSE) Written approval --

07:33:46 3 MR. HULINGS: Written approval from whom?

07:33:49 4 Q. (BY MR. NASSE) -- as described in

07:33:51 5 paragraph 23.

07:33:51 6 A. I don't see anything -- I'm sorry.

07:33:53 7 MR. HULINGS: Calls for a legal conclusion.

07:33:55 8 THE WITNESS: I don't see anything in

07:33:57 9 paragraph 23 that talks about -- that says written

07:33:58 10 approval.

07:33:59 11 Q. (BY MR. NASSE) Are you aware of any -- go

07:34:00 12 ahead.

07:34:00 13 A. Would you like to point? I don't understand  
07:34:03 14 where you're looking for where it says written approval.

07:34:05 15 Q. Well, I mean, is there any documentation of an  
07:34:06 16 approval of compensation you received?

07:34:11 17 A. Maybe I'm confused. I was never paid by  
07:34:14 18 the575.

07:34:16 19 Q. Yeah. And you -- you were the only manager of  
07:34:19 20 575; is that right?

07:34:20 21 A. Yes.

07:34:21 22 Q. Okay. And throughout its existence?

07:34:24 23 A. Yes. And I will qualify that up to the  
07:34:38 24 bankruptcy, of course, when...

07:34:39 25 Q. Understood.

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07:34:42 1 MR. HULINGS: So probably at the time. Is  
07:34:45 2 there something short to wrap up or do we need to go off  
07:34:50 3 the record for where exactly we are on the clock?

07:34:52 4 MR. NASSE: We have more questions to ask.  
07:34:54 5 We'd like more time. We can put that on the record.  
07:34:57 6 You've indicated that you are not going to agree to  
07:35:00 7 that.

07:35:00 8 MR. HULINGS: The SEC had a certain amount  
07:35:02 9 of time. How it chose to use its time is up to the SEC.  
07:35:07 10 And I think we've -- you know, it has the time that is  
07:35:10 11 allowed and that's it. We're not agreeing to more.

07:35:12 12 MR. NASSE: We, of course, reserve our  
07:35:14 13 rights to seek more time under the Rules. We can go off  
07:35:17 14 the record.

07:35:17 15 VIDEOGRAPHER: We are off the record at  
07:35:19 16 7:35 p.m.

07:35:20 17 (Proceedings concluded at 7:35 p.m.)

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